

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-198-T - ORDER NO. 96-18 ✓
JANUARY 5, 1996

IN RE: Application of Accurate Van Lines, Inc.) ORDER
2710 13th Street, Phenix City, AL 36869) DENYING
for a Class E Certificate of Public) CERTIFICATE
Convenience and Necessity.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Accurate Van Lines, Inc. (Accurate or the Applicant) for a Class E Certificate of Public Convenience and Necessity authorizing it to transport property as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-211(14):
Between points and places in South Carolina.

The Application was filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties of the manner and time in which to file pleadings for inclusion in the proceedings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director, and the Applicant filed affidavits of

publication with the Commission. Petitions to Intervene were filed by Carey Moving & Storage, Inc; Carey Moving & Storage of Greenville, Inc.; Smith Dray & Storage, Inc.; and Smith Dray Line & Storage Co., Inc.

A public hearing concerning the instant Application was convened on December 6, 1995, at 10:30 a.m. in the hearing room at the offices of the Commission located at 111 Doctors Circle, Columbia, South Carolina. The Honorable Rudolph Mitchell, Chairman, presided. Accurate was represented by Robert T. Bockman, Esquire. The Commission Staff was represented by Florence P. Belser, Staff Counsel. None of the Intervenors were represented by counsel.

Marty Maddux and Mark Taylor testified on behalf of the Applicant. P. A. Carey and Scott Dickerson testified on behalf of the Intervenors. Julia Brennan appeared as a public witness and was introduced by the Commission Staff.

APPLICABLE LAW

1. South Carolina Code Ann. §58-23-590(C) (as amended by the 1995-1996 General Appropriations Bill, H. 3362, Ratification No. 211), provides in relevant part as follows:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the commission that:

(1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and

(2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

2. 26 S.C. Code Regs. 103-133(1) (as amended in S.C. State Register Vol. 19, No. 5, published May 26, 1995) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

- a. FIT. The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

EVIDENCE OF RECORD

1. Marty Maddox, Vice President of Accurate Van Lines, testified on behalf of Accurate. Mr. Maddox described Accurate's operations in Florida, Alabama, and Georgia as well as in the Columbia area and testified regarding Accurate's expectations if Accurate's Application is approved. According to Mr. Maddox, Accurate has ICC authority and also holds intrastate authority in Alabama and Georgia. Accurate operates in Florida, which is a

deregulated state, without the need for authority. Accurate also transports general commodities under a Certificate of Compliance in South Carolina. Mr. Maddox stated that Accurate is not working at full capacity and estimated that Accurate receives calls for approximately 50 moves per month which Accurate must turn down since Accurate does not hold intrastate household goods authority in South Carolina. Mr. Maddox testified that 95% of Accurate's business is military business and that Accurate has received very high scores for the work that Accurate performed for the military.

2. Mrs. Julia Brennan appeared and testified as a public witness. Mrs. Brennan stated that in October 1993 she used Accurate for a local move. Mrs. Brennan stated that she used Accurate when she moved from one part of Lexington County to another part of Lexington County. Mrs. Brennan stated that she contacted Accurate based on the recommendation of a friend and that she chose Accurate based on the way Mr. Maddox presented himself and the fact that she received a "better" price from Accurate than from the other mover she contacted. Mrs. Brennan also testified that some of her property was damaged during the move and that she filed a complaint with the Commission because she was not satisfied at the way Accurate handled her claim for damages. Mrs. Brennan did admit that she packed the boxes for her move but stated that the boxes were marked "fragile" and "dining room."

In response to Mrs. Brennan's testimony, Mr. Maddox expressed some confusion over the what constituted an "illegal move" but acknowledged that Accurate had been written a citation for the

Brennan move and that Accurate paid a fine for the citation.

3. Mark Taylor of Don Taylor and Associates also testified for Accurate. Mr. Taylor testified that he had an occasion to use Accurate's services and that he was very pleased with the services of Accurate. Upon further questioning, Mr. Taylor stated that Accurate had not performed any moving services for him and he used of Accurate for its storage services.

4. Pat Carey and Scott Dickerson offered testimony on behalf of the Intervenor. Mr. Carey stated that there is sufficient capacity in the household movers in South Carolina presently. Mr. Carey testified regarding his Spartanburg operation that he checked the schedules for the day of the hearing and the next day (December 6 and 7, 1995) and the schedules showed one intrastate job which was postponed at the customer's request. Mr. Carey also testified that the moving industry experiences a "peak season" and that even during the "peak season" he can accommodate jobs with sufficient notice.

Mr. Dickerson stated that his company began in the upstate and expanded to the Columbia area in 1977. According to Mr. Dickerson, there are approximately 27 movers in the Columbia area. Mr. Dickerson also testified that his company has excess capacity.

After full consideration of the Application, the testimony presented, and the applicable law, the Commission has determined that the Application of Accurate requesting a Certificate of Public Convenience and Necessity should be denied.

FINDINGS OF FACT

1. Accurate is an Alabama corporation currently operating in

South Carolina under general commodities (freight) authority (i.e. a Certificate of Compliance which was formerly issued by this Commission but which at the time of this hearing is issued by the Department of Revenue) and under ICC authority. By its Application, Accurate seeks intrastate household goods authority in South Carolina.

2. As regarding this Application, the Commission finds that the Applicant has not shown that the service for which it seeks authority (i.e. intrastate statewide authority to transport household goods) is required by the present public convenience and necessity.

CONCLUSIONS OF LAW

1. Accurate's Application provides information regarding Accurate's corporate status and financial information. Mr. Maddux offered testimony regarding Accurate being fit, willing, and able to properly perform the services for which it seeks authority. Specifically, Mr. Maddox testified that there are no outstanding judgments pending against Accurate, that Accurate has the equipment to provide the services requested, and that Accurate has sufficient insurance. However, while Mr. Maddox testified that Accurate would operate in compliance with all statutes and regulations governing for-hire motor carriers in South Carolina, he seemed unsure and somewhat confused about the necessary safety audit and what is, or is not, covered in the scope of the requested authority. Mr. Maddox also testified that Accurate gave "firm" quotes for jobs, which certified intrastate carriers are prohibited from doing by the Commission's Rules and Regulations.

Based on the evidence presented, the Commission has some reservations whether Accurate has demonstrated that it is fit, willing, and able to perform the requested services. However, considering the Commission's opinion below regarding the issue of public convenience and necessity, the Commission takes no position on whether Accurate has demonstrated that it is fit, willing, and able.

2. Based on the record and the applicable law, the Commission concludes that the Application should be denied because Accurate has failed to present sufficient evidence to show that the services which Accurate proposes to offer are required by the present public convenience and necessity. The only evidence presented by Accurate regarding the issue of the need for Accurate's services was Mr. Maddox's unsubstantiated statement that he receives calls for approximately 50 intrastate moves per month which he must refuse. No shipper witnesses were presented to show difficulty or hardship in obtaining moving services from the existing carriers holding household goods authority. While Mr. Taylor testified that he was satisfied with the services that Accurate provided for him, those services were for storage and not for the moving services which are subject to this Commission's regulation.

Furthermore, even the public witness testified that she chose Accurate over the other carrier she contacted based on the way Mr. Maddux presented himself and the lower price quoted by Accurate. Mrs. Brennan's choice was not due to lack of another carrier to perform the work. Additionally, the Intervenor testified that

sufficient capacity among household goods movers currently exists in South Carolina.

Therefore, the Commission concludes that Accurate has failed to meet the requirement of showing that the proposed service is required by the present public convenience and necessity.

IT IS THEREFORE ORDERED THAT:

1. The Application of Accurate for a Class E Certificate of Public Convenience and Necessity to transport household goods is hereby denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)